If the littoral owner has the fee he can alienate it apart from his upland, while if he has merely an easement he can not, for it is appurtenant to his upland. The right to wharf out has been exercised from early times in many of the states, *Dutton* v. *Strong* (1861) 1 Black 23, 32, and, doubtless, almost invariably in connection with the sight of ingress and egress. It has usually been either identified with that right or grouped with it, *Dutton* v. *Strong*, supra; *Yates* v. *Milwaukee*, supra; *R. R. Co.* v. *Schurmier* (1868) 7 Wall 272, 289, and although the two rights involve different modes of user, they are regarded as depending upon the same fact, viz., littoral or riparian ownership. It would seem that this right was recognized for the benefit of riparian ownership, and, as laid down in the principal case, for the more complete enjoyment of the right of ingress and egress, and to allow its alienation apart from the upland would defeat the very purpose for which the right was originally recognized and would seem of doubtful policy for economic reasons. Moreover, it is more natural to consider this right as an easement and thus analogous in its nature to the allied right of ingress and egress, than as a conditional fee.

THE LEGAL CHARACTER OF RIGHTS UNDER "GOVERNMENTAL LICENSES."—A franchise was first conceived of as "a branch of the king's prerogative" which had been granted to a subject, 2 Bl. Com. *37, and as such was held to be an incorporeal hereditament. 2 Bl. Com. *21; *Regina* v. *Cambrian R. R. Co.* (1871) L. R. 6 Q. B. 422. In the United States, the conception of a franchise has changed from that of a granted sovereign prerogative to that of the subject of a contract between the state and a person or persons, *Pierce* v. *Emery* (1856) 32 N. H. 484; 4 Thompson, Corporations, § 5335; 2 Spelling, Priv. Corp. § 1054; see *Rex* v. *Pasmore* (1789) 3 T. R. 199, 246, whereby for valuable consideration permission is given to do something in which the public as a whole is interested, *Pierce* v. *Emery*, supra; *Century Transfer Co.* v. *Pullman Co.* (1890) 139 U. S. 24, and which one could not do as of common right, *Abbott* v. *Smelting Co.* (1876) 4 Neb. 416; *Chicago R. R.* v. *Dunbar* (1880) 95 Ill. 571, under the common law. *Spring etc. Co.* v. *Schottler* (1882) 62 Cal. 69; *Bank of Augusta* v. *Earle* (1839) 13 Pet. 519, 595. The franchise still retains its character of property, *Wilmington R. R.* v. *Reid* (1871) 13 Wall. 264; *People* v. *O'Brien* (1888) 111 N. Y. 1, 40, while gaining further protection from the constitutional provision as to the inviolability of contracts. *Oliver* v. *Memphis R. R.* (1875) 30 Ark. 128; *Wilmington R. R.* v. *Reid*, supra. The governmental authorization need not be in terms of a contract, but the other characteristics being present, the authorization will be interpreted as a contract as of course; *People* v. *O'Brien*, supra; see *City of Bridgeport* v. *N. Y. & N. H. R. R.* (1869) 36 Conn. 255, 264; and although franchises are generally exercised by corporations they are not necessarily. *Memphis R. R.* v. *Berry* (1884) 112 U. S. 609; *Brady* v. *Moulton* (1895) 61 Minn. 185; 4 Thompson, Corp. § 5335. "Franchise" is also used in another and special sense, namely, the franchise of incorporation, but this franchise is also conceived of as the subject of a contract, having the qualities enumerated above. *Dartmouth College* v. *Woodward* (1819) 4 Wheat. 518; Freund, Police Power, § 361.

On the other hand, a governmental license, in the strict legal sense, is the permission to do that which one naturally has the right to do, but which has, under the police power, been forbidden as a general right. 2 Bouvier, Law Dict. 224; Freund, Police Power, § 36; Tiedeman, Lim. Police Power, 273—Thus it appears that a license does not allow the exercise of a privilege not of common right, nor of one originally conceived of as inherent in the sovereign power, nor does it grant a privilege the exercise of which is tinged with a public character. In fact, a governmental license has none of the characteristics which led historically to the recognition of a franchise as a vested right of property, and which later led to its protection under the conception of it as the subject of a contract; but it resembles a franchise only in that it is a permission by the state to do something which could not otherwise be done legally. It would, therefore, seem that the governmental license should not be considered a vested right of property, nor the subject of a contract; but should be considered just as freely revocable as is the ordinary license in private law: and this is the view of the best considered cases. *Met. Bd.* v. *Barrie* (1866) 34 N. Y. 657, 667; *Fell* v. *State* (1874) 42 Md. 71; *Cohen* v. *Wright* (1863) 22 Cal. 293.

Although a governmental license is not generally a contract, nor interpreted as one, yet of course that which is generally the subject matter of a license can, if the intention of the parties so appears, be as well the subject of a contract, and thus be within the constitutional provision as to the inviolability of contracts. *Union Bank* v. *State* (1836) 9 Yerg. 490; *Keith* v. *Clark* (1878) 97 U. S. 454. The question then arises whether in a given case the legislative permission is the subject of a license merely or of a contract. The determination of this question depends upon whether there has been any consideration given for the permission. A few courts answer this question in the affirmative, pointing with assurance to the payments required. *Heire* v. *Town Council* (1853) 6 Rich. L. R. 404; *Adams* v. *Hackett* (1853) 27 N. H. 289; *State* v. *Phalend & Paine* (1842) 4 Harr. 441; *Boyd* v. *State* (1871) 46 Ala. 329. This requirement alone, however, is certainly not conclusive evidence of a contract. Such payment may simply be required as part of the police measure itself, to defray the expenses of inspection, etc., *Boston* v. *Schaffer* (1830) 8 Pick. 415; *Welch* v. *Hotchkiss* (1872) 39 Conn. 140; *Com.* v. *Ploisted* (1889) 148 Mass. 375; or where the amount exacted exceeds such requirement, the excess may be the tax of a privilege; *People* v. *Murray* (1896) 149 N. Y. 367, 378; *Simmons* v. *State* (1848) 12 Mo. 268; or its purpose may be that of further police restriction in order to discourage a given business; *Tenney* v. *Lenz* (1863) 16 Wis. 589; *Duluth* v. *Krupp* (1891) 46 Minn. 435; *People* v. *Murray*, supra; or that which is called "a license" to which a "license fee" is attached, may be a tax pure and simple and not a license or contract at all: such being the so-called licenses to do things which one may do as of common right and which the public welfare does not require to be the subject of police regulation. *Ex parte Nurande* (1887) 73 Cal. 365; *Banta* v. *Chicago* (1898) 172 Ill., 204. Since statutes should be interpreted in favor of the state, the preferable view is to hold such permissions to be revocable licenses, unless the contrary intention is evidenced by something more

than the requirement of payment therefor. Freund, Police Power, §§561, 562. It seems difficult, therefore, to understand the ground upon which part of the court held in a recent New York case, that a milk license "could not be revoked in any event without notice to the relator and a hearing," *People* v. *Dept. of Health* (1907) 103 N. Y. Supp. 275, since this jurisdiction has clearly declared a license not to be a vested right of property, *Met. Board* v. *Barrie*, supra, and nothing can be discovered in the form of license required to lend color to an interpretation of it as a contract. Being neither a vested right of property nor the subject of a contract, it should, in the absence of statutory provision, be revocable at will, without notice or a hearing.

APPLICATIONS IN LAW OF THE DOCTRINE OF PAR DELICTUM.—The rule which denies the aid of the courts to parties who by their own acts have placed themselves *in pari delicto*, *Lowry* v. *Bourdieu* (1780) Doug. 451; *Houson* v. *Hancock* (1800) 8 T. R. 575; *Webb* v. *Fulchire* (1843) 40 Am. Dec. 419; *Brown* v. *Brown* (1895) 66 Conn. 493, being founded solely on public policy, the technical rights of the parties before the court are not determinative of the issue. The benefit to the defendant by the court's refusal to act is accidental only, for if the parties were reversed the benefit would inure to the plaintiff. *Holman* v. *Johnson* (1775) Cowp. 341, 343; *Rucker* v. *Wynne* (1859) 2 Head 617. It is conceived that the basic general rule is that where the plaintiff cannot set up his claim without invoking the aid of an illegal transaction, he will be barred. *Simpson* v. *Bloss* (1816) 7 Taunt. 246; *Hinnen* v. *Newman* (1886) 35 Kan. 709; *Grant* v. *Ryan* (1872) 37 Tex. 37, 41. Assuming the subject matter of a contract to be against public policy, three cases may arise: first, the contract may be wholly unperformed; second, it may be wholly performed; third, it may be performed only on the plaintiff's side. It is universally recognized that where the contract is wholly unperformed the courts will apply the general rule and not interfere. *Shay* v. *Wright* (1861) 35 Barb. 236; *Houson* v. *Hancock*, supra. Where the contract is wholly performed there are two exceptions to the general rule: first, where the plaintiff has acted illegally under oppression or duress; second, where the contract is illegal because in violation of a statute passed to protect a particular class of persons of which the plaintiff is a member. The first of these exceptions was established by Lord Mansfield in the case of *Smith* v. *Bromley* (1760) Doug. 670. A similar result had previously been reached in the case of *Bosanquett* v. *Dashwood* (1734) Talbot's Cases 37 (In Equity); though a recovery at law had been denied in *Tompkins* v. *Barnett* (1693) 1 Salk. 22, a case practically overruled by *Clark* v. *Shee* (1774) Cowp. 197. This doctrine has been followed in a long line of English and American cases. *Williams* v. *Bayley* (1866) L. R. 1 H. L. 200; *Turley* v. *Edwards* (1885) 18 Mo. App. 676; *Hinsdill* v. *White* (1861) 34 Vt. 558; *Duval* v. *Wellman* (1891) 124 N. Y. 156. It evidently goes to the root of the doctrine of *par delictum*, for when one party is under duress he cannot be said to be in "equal wrong" with the other. *Hinsdill* v. *White*, supra. What constitutes duress or oppression is somewhat a question of degree, but it seems as if the same con-